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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 KEITH EMMANUEL, et al.,

CASE NO. C18-0377JLR

11 Plaintiffs,

ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

12 v.

13 KING COUNTY, et al.,

14 Defendants.

15 **I. INTRODUCTION**

16 Before the court is Defendants King County, King County Prosecutor Daniel
17 Satterberg, and King County Sheriff John Urquhart's motion for summary judgment.
18 (*See* MSJ (Dkt. # 61).) Plaintiff Richard Homchick opposes the motion. (*See* Resp. (Dkt.
19 # 75-2).¹) The court has considered the motion, the parties' submissions in support of
20 and in opposition to the motion, the relevant portions of the record, and the applicable

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¹ As discussed below, the court considers Mr. Homchick's "corrected" response and refers to it as his response in this order. *See infra* § III.A.

1 law. Being fully advised,² the court GRANTS Defendants' motion for summary
 2 judgment.

3 **II. BACKGROUND**

4 **A. Factual Background**

5 **1. King County's Efforts to Combat Prostitution and Trafficking**

6 This case involves an investigation into the exploitation of women through
 7 prostitution and the aftermath of that investigation. Beginning in 2012, Prosecutor
 8 Satterberg directed his criminal division to explore effective "anti-demand strategies" to
 9 address the widespread problem of commercial sex exploitation. (*See* Clark Decl. (Dkt.
 10 # 63) ¶ 5.) Data suggested that only about 196 of the 100,000 sex buyers in King County
 11 were charged each year for buying sex. (*Id.* ¶ 7.) The King County Prosecuting
 12 Attorney's Office ("KCPAO") began working with other law enforcement agencies on its
 13 strategies, and their efforts became known as "Operation No Impunity." (*Id.* ¶ 6; 1st
 14 Montgomery Decl. ¶ 7, Ex. L ("Handout").) KCPAO also focused its efforts on public
 15 information and education strategies, with one goal being to inform potential sex buyers

16 ² Mr. Homchick and Defendants request oral argument. (*See* MSJ at 1; Resp. at 1.) Oral
 17 argument is not necessary where the non-moving party suffers no prejudice. *See Houston v.*
Bryan, 725 F.2d 516, 517-18 (9th Cir. 1984); *Mahon v. Credit Bureau of Placer Cty. Inc.*, 171
 18 F.3d 1197, 1200 (9th Cir. 1999) (holding that no oral argument was warranted where "[b]oth
 19 parties provided the district court with complete memoranda of the law and evidence in support
 20 of their respective positions," and "[t]he only prejudice [the defendants] contend they suffered
 21 was the district court's adverse ruling on the motion."). "When a party has an adequate
 22 opportunity to provide the trial court with evidence and a memorandum of law, there is no
 prejudice [in refusing to grant oral argument]." *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir.
 1998) (quoting *Lake at Las Vegas Inv'r's Grp., Inc. v. Pac. Malibu Dev. Corp.*, 933 F.2d 724, 729
 (9th Cir. 1991)) (alterations in *Partridge*). Here, the issues have been thoroughly briefed by the
 parties, and oral argument would not be of assistance to the court. *See* Local Rules W.D. Wash.
 LCR 7(b)(4). Accordingly, the court DENIES the parties' requests for oral argument.

1 of the risks and impacts of their activities. (Clark Decl. ¶ 7.) Between November 2014,
 2 and April 2016, KCPAO suggests it impacted over 1.67 million buyer disruptions,
 3 including 334 prosecutions. (*Id.* ¶ 8.)

4 An advocacy group, Demand Abolition, awarded \$205,001.00 in grants to
 5 KCPAO, including a \$50,000 grant in early 2014. (*Id.* ¶¶ 9-10.) Demand Abolition
 6 seeks to “eradicate[e] the illegal commercial sex industry in the U.S. by combatting the
 7 demand for purchased sex and increasing accountability for buyers.” (*See* 2nd Cassubhai
 8 Decl. (Dkt. # 74-1) ¶ 4, Ex. 37.) Additionally, representatives from KCPAO and
 9 Demand Abolition communicated frequently during the Operation No Impunity
 10 investigation. (*See, e.g., id.* ¶ 4, Ex. 35.)

11 2. Mr. Homchick’s Promotion of Prostitution and Arrest

12 Mr. Homchick began buying sex in 2010. (1st Montgomery Decl. (Dkt. # 62) ¶ 3,
 13 Ex. C (“Homchick Dep.”) at 52:17-25.) By 2014, he began buying sex about twice a
 14 month, and by 2016, the frequency increased to once a week. (*Id.* at 53:15-16.) Over this
 15 period, he saw between 30 and 40 different prostituted persons who were typically
 16 Korean nationals. (*Id.* at 100:24-101:2.) Mr. Homchick frequently wrote reviews of his
 17 visits under the screen name “Spider Rico” on The Review Board (“TRB”), a
 18 password-protected website that served as “a marketplace based upon transactions for sex
 19 exchanging” that would “connect[] users with providers.” (*Id.* at 101:23-103:7; 1st
 20 Montgomery Decl. ¶ 6, Ex. E (“Proffer”) at 8:20-24, ¶ 5, Ex. D (“Homchick Reviews”).)
 21 Mr. Homchick stated that he wrote reviews in order to help the women he visited “stay
 22 busy” and make a “revenue stream.” (Proffer at 12: 20-25.)

1 Based largely on his online reviews, Mr. Homchick was invited to and joined a
2 group that calls itself the League of Extraordinary Gentlemen (“the League”), an
3 “exclusive group of men dedicated to the commercial sexual exploitation of women,
4 particularly foreign women brought into . . . the United States for prostitution purposes.”
5 (Proffer at 22:20-22.) Members of the League operated additional websites, including
6 www.theloeg.net and www.kgirlsdelights.com. (1st Montgomery Decl. ¶ 2, Ex. B at 1.)
7 Mr. Homchick assisted www.kgirlsdelights.com by uploading pictures of prostituted
8 women. (Homchick Dep. at 109:1-16.) He was also involved in maintaining profiles on
9 www.kgirlsdelights.com for several different regions (*see* Proffer at 54:15-55:17) and
10 continued to post his own reviews, again under the “Spider Rico” screen name
11 (Homchick Dep. at 110:14-23 (testifying that “Spider Rico was known”).)

12 While Mr. Homchick was engaging in the above activity, the King County
13 Sheriff’s Office and the Bellevue Police Department were investigating the League’s
14 activities. (1st Montgomery Decl. ¶ 2, Ex. B at 1.) That investigation led to Mr.
15 Homchick’s arrest and that of several other men (“the Arrestees”). (*See* 1st Montgomery
16 Decl. ¶ 7, Ex. F (“Press Conf. Tr.”).)

17 3. Press Conference and Press Release

18 Mr. Homchick’s claims against Defendants in this lawsuit largely revolve around
19 statements made at a press conference (the “Press Conference”) and in a press release
20 (the “Press Release”) announcing the results of the KCSO and BPD’s investigation into
21 the League. (*See* SAC (Dkt. # 58) ¶¶ 57-96.) On January 7, 2016, Prosecutor Satterberg,
22 Sheriff Urquhart, and Bellevue Police Chief Steven Mylett held the Press Conference to

1 announce the results of the investigation, including several arrests. (*See* Press Conf. Tr.)
2 During the Press Conference, Defendants made several statements that are at issue in this
3 case:

- 4 • Sheriff Urquhart: Obviously this is a prostitution case. This is a human
trafficking case is a better way to put this. (*Id.* at 3.)
- 5 • Sheriff Urquhart: [The prostituted women] weren't allowed out for the most
part. They weren't given any money, to speak of, for the most part. And
they were trafficked up and down the West Coast to other similar situations.
(*Id.* at 6.)
- 6 • Sheriff Urquhart: These women were trafficked. They were true victims.
And this type of crime cannot continue in our area. (*Id.* at 9.)
- 7 • Prosecutor Satterberg: It just so happens that January is human trafficking
awareness month. This is what human trafficking looks like. (*Id.* at 18-19.)
- 8 • Prosecutor Satterberg: They euphemistically called themselves hobbyists.
And their hobby was the criminal sexual abuse of women brought here,
against their will, in servitude to pay off debts back in Korea. (*Id.* at 19-20.)
- 9 • Sheriff Urquhart: [The prostituted women] were abused and commercially
raped by men here in King County. That's what this case is about. And
that's what is fueling us. Because this is an international human trafficking
ring. It's right here in King County, Washington. And we're offended by it.
(*Id.* at 39.)
- 10 • Police Chief Mylett: [I]n cases such as this, the sexual contact was not
consensual, and these women were being forced to perform sexual acts
through exploitation, force and coercion. (*Id.* at 16.)
- 11 • Police Chief Mylett: These women are being abused, they're being raped,
they're being murdered. (*Id.* at 26.)

12 In conjunction with the Press Conference, KCPAO issued the Press Release.

13 (Clark Decl. (Dkt. # 63) ¶ 11, Ex. B ("Press Release").) The Press Release described the
14 investigation, the arrests, and the activities of the League and the above-referenced
15

1 review websites. (*See* Press Release at 1-3.) In addition, the Press Release included the
2 following statements:

- 3 • The investigation resulted in the filing of criminal charges against over a dozen suspects in connection with the sexual exploitation of women who were being brought into the United States and then prostituted.
- 4
- 5 • An investigation by the King County Sheriff's Office, with the assistance of the Bellevue Police Department and support from the F.B.I. and the King County Prosecutor's Office, culminated in the arrests of 11 men earlier this week who were local members of the online network that used its resources to promote prostitution and facilitate sexual exploitation.
- 6
- 7 • 'The Sheriff's Office is committed to holding accountable those who prosper from the crime of human trafficking, and to freeing the victims of that crime to live a better life,' said King County Sheriff John Urquhart.
- 8
- 9 • Bellevue Chief of Police Steve Mylett said, 'This investigation highlights the fact that human trafficking and sexual exploitation in all its forms, including crimes involving force, fraud, and coercion are happening in communities throughout this nation every day. We will continue to work with our law enforcement partners and victim support organizations to hold the buyers and promoters of these criminal activities accountable for their involvement while identifying and assisting the victims of human trafficking in every possible way.'
- 10
- 11 • The large-scale investigation also focused on brothel owners, who established a pipeline of foreign women to the Pacific Northwest to meet the burgeoning demand for prostitution fostered by TRB and The League. The brothels provided everything for the prostituted persons, including apartments, advertising, customers and condoms. The prostituted individuals are typically foreign nationals who are transported from major city to major city so that there are always new workers and new 'experiences' for the brothels to advertise in order to meet the ever-growing online demand for commercial sex. The women rarely, if ever, left the apartments, and were told by bookers and schedulers in Los Angeles and Dallas when they would be having sex, with whom, and where. The brothels typically made the prostituted women available 12 to 14 hours a day, seven days a week.
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- 13 • 'These charges reveal a part of our community that most people do not want to believe exists,' said King County Prosecutor Dan Satterberg. 'Because
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1 they had money, these men gained access to sexually abuse these vulnerable
 2 young women, then put their energies toward a campaign to encourage many
 3 more men to do the same. This is what human trafficking looks like,’ he
 4 added.

5 (Press Release at 2-3.) Defendants did not mention Mr. Homchick by name in the Press
 6 Release. (*See generally id.*)

7 Finally, Defendants provided a handout (“the Handout”) at the Press Conference
 8 detailing the Operation No Impunity investigation. (*See Handout.*) The Handout
 9 includes a review written by Mr. Homchick of one of his visits with a prostituted woman.
 10 (*See id.* at 6.)

11 4. Mr. Homchick’s Criminal Case and Guilty Plea

12 KCPAO charged Mr. Homchick by information with one count of Promoting
 13 Prostitution in the Second Degree. (*Id.* ¶ 2, Ex. H (“Information”).) On February 12,
 14 2016, Mr. Homchick pled guilty by straight plea to the charged crime, admitting that he
 15 “did knowingly advance the profession of prostitution through my internet activities on
 16 websites such as: thereviewboard.net, kgirldelights.com and through my email
 17 activities.” (*Id.* ¶ 2, Ex. I at 13-14.) Mr. Homchick was sentenced based on the
 18 stipulated facts to zero days in custody, 120 hours of community service, a class, and
 19 standard assessments. (*Id.* ¶ 2, Ex. J.)

20 As part of his plea agreement, Mr. Homchick stipulated to a number of facts,
 21 including that he “is a member of an exclusive group of men dedicated to the commercial
 22 sexual exploitation of women, particularly foreign women brought into the United States
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for prostitution purposes.” (*Id.* ¶ 2, Ex. B (“Prosecutor’s Statement”) at 1.)³ Additionally, Mr. Homchick stipulated that his actions promoting prostitution “directly expanded and increased the market for exploited women in the region,” that as a result of his actions “numerous Asian brothels have sprung up in the region to respond directly to the demand for prostitution,” and that “[t]hese brothels serve as part of a national pipeline that transports exploited women around the country for use in prostitution.” (*Id.*) Mr. Homchick further stipulated that he “maintained constant communication centered on [his] obsession with sexual exploitation” and “contributed to a national network of commercial sexual exploitation and personally engaged in this exploitation time and time again.” (*Id.*)

B. Procedural History

Mr. Homchick initially brought this lawsuit on behalf of himself and two other plaintiffs, Keith Emmanuel and Charles Peters, against King County, the City of Bellevue, Sheriff Urquhart, Prosecutor Satterberg, and Police Chief Mylett. (Compl. (Dkt. # 1) at 1.) Early in this case, Defendants filed a combined motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) based largely on *Heck v. Humphrey*, 512 U.S. 477 (1994), and a motion to stay the case pending the outcome of Mr. Homchick's criminal case. (See MTD (Dkt. # 17).) In relevant part, the court denied the motion to dismiss Mr. Homchick's federal claims. (7/6/18 Order (Dkt. # 25) at 13.) In doing so,

³ Exhibit B to Mr. Montgomery’s declaration includes both the prosecutor’s statement and the certificate for determination of probable cause. The court cites to the prosecutor’s statement as “Prosecutor’s Statement” and the Certificate for Determination of Probable Case as “Probable Cause Cert.”

1 the court noted that “Mr. Homchick does not concretely identify how Defendants violated
 2 his right to due process.” (*Id.* at 11.) Although the court did not dismiss Mr. Homchick’s
 3 federal claims based on *Heck*, the court held that Mr. Homchick “cannot proceed on any
 4 theory that [his guilty] plea was not knowing and voluntary.” (*Id.* at 12.)

5 On November 15, 2018, the court granted the parties’ stipulated motion for
 6 Plaintiffs Keith Emmanuel and Charles Peters to voluntarily dismiss their claims pursuant
 7 to Federal Rule of Civil Procedure 41(a)(1). (11/16/18 Order (Dkt. # 36) at 2.) On April
 8 2, 2019, the court granted the parties’ stipulated motion to dismiss Mr. Homchick’s
 9 claims against Police Chief Mylett and the City of Bellevue with prejudice. (4/2/219
 10 Order (Dkt. # 43) at 3.)

11 On June 4, 2020, King County, Prosecutor Satterberg, and Sheriff Urquhart filed
 12 their present motion for summary judgment. (*See* MSJ.) The court now considers their
 13 motion.

14 III. ANALYSIS

15 A. Initial Matter

16 Before turning to the merits of Defendants’ summary judgment motion, the court
 17 first addresses an initial matter raised by Mr. Homchick’s counsel. Mr. Homchick filed
 18 his response to Defendants’ motion for summary judgment and three declarations on June
 19 22, 2020. (*See* Orig. Resp. (Dkt. # 70); Homchick Decl. (Dkt. # 71); Reiten Decl. (Dkt.
 20 # 72); 1st Cassubhai Decl. (Dkt. # 73).) Mr. Cassubhai’s first declaration included five
 21 exhibits. (*See* 1st Cassubhai Decl. ¶¶ 4-5, 8, Exs. A-E.) The following day, Mr.
 22 Homchick’s counsel filed a praecipe (*see* 1st Praecipe (Dkt. # 74)) seeking to have the

1 court consider an additional declaration from Mr. Cassubhai (*see* 2nd Cassubhai Decl.).
2 Mr. Cassubhai's second declaration attaches 51 exhibits. (*See* 2nd Cassubhai Decl. ¶ 4,
3 Exs. 1-51.) Mr. Homchick's originally filed responsive brief cites to many of these
4 exhibits. (*See generally* Orig. Resp.) In the first praecipe, Mr. Homchick's counsel
5 states that “[t]he reason that these materials were not included with [Mr. Homchick's
6 responsive brief] is due to a number of complications that arose during undersigned
7 counsel's efforts to assemble the voluminous materials on his own, remotely away from
8 the usual office technology and support staff that would be accessible under normal
9 circumstances.” (*Id.* at 1-2.)

10 On June 24, 2020, Mr. Homchick's counsel filed a second praecipe. (*See* 2nd
11 Praecipe (Dkt. # 75).) The second praecipe seeks to substitute a “corrected” responsive
12 brief (*see* Resp.) that fixes “a number of record citations in the filed response in order to
13 conform with the submitted evidence” because “exhibit numbering was not final at the
14 time of the filing of the response.” (*Id.* at 2.) Mr. Homchick's counsel represents in the
15 second praecipe that the “corrected” responsive brief “should mirror in all respects what
16 was sent to Defendants yesterday,” with the exception of “fixing an inadvertent page
17 break.” (*Id.*) Mr. Homchick's counsel also submitted a redlined version of the corrected
18 response. (*See* Redlined Resp. (Dkt. # 75-1).) Defendants do not address Mr.
19 Homchick's praecipes in their reply brief and cite to Mr. Homchick's “corrected”
20 response when referring to Mr. Homchick's response brief. (*See, e.g.,* Reply (Dkt. # 76)
21 at 4.)

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1 “Parties are expected to file accurate, complete documents, and the failure to do so
2 may result in the court’s refusal to consider later filed corrections or additions to the
3 record.” Local Rules W.D. Wash. LCR 7(m). Local Civil Rule 7(m) instructs parties to
4 file a praecipe “[i]n the event that an error is discovered.” *Id.* A party filing a praecipe to
5 correct an error must include the corrected document and must specify the corrections by
6 line and page number. *Id.* “If the party seeks to add an additional document in support of
7 a previous filing, the praecipe must set forth why the document was not included with the
8 original filing and reference the original filing by docket number.” *Id.*

9 The court will consider Mr. Homchick’s late filings in this instance. Because both
10 parties refer to and rely on the corrected filings, and because Defendants have not raised
11 any opposition to the court considering the late filings, the court concludes that declining
12 to consider the late filings would serve to create confusion and risk deciding Defendants’
13 motion on a less-than-complete record. However, the court cautions Mr. Homchick’s
14 counsel that the problems with his filings appear to be due to a lack of preparation, not to
15 inadvertent errors. Simply put, counsel failed to timely file nearly all the exhibits he
16 intended to attach to his client’s responsive brief and included citations in his responsive
17 brief to exhibits that he had yet to file. The court expects counsel to be more prepared in
18 the future.

19 **B. Legal Standard**

20 Summary judgment is appropriate if the evidence viewed in the light most
21 favorable to the non-moving party shows “that there is no genuine dispute as to any
22 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.

1 56(a); see *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Beaver v. Tarsadia Hotels*,
 2 816 F.3d 1170, 1177 (9th Cir. 2016). A fact is “material” if it might affect the outcome
 3 of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute
 4 is “‘genuine’ only if there is sufficient evidence for a reasonable fact finder to find for the
 5 non-moving party.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001)
 6 (citing *Anderson*, 477 U.S. at 248-49).

7 The moving party bears the initial burden of showing there is no genuine dispute
 8 of material fact and that it is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at
 9 323. If the moving party does not bear the ultimate burden of persuasion at trial, it can
 10 show the absence of such a dispute in two ways: (1) by producing evidence negating an
 11 essential element of the nonmoving party’s case, or (2) by showing that the nonmoving
 12 party lacks evidence of an essential element of its claim or defense. *Nissan Fire &*
 13 *Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1106 (9th Cir. 2000). If the moving party
 14 meets its burden of production, the burden then shifts to the nonmoving party to identify
 15 specific facts from which a factfinder could reasonably find in the nonmoving party’s
 16 favor. *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 250.

17 **C. Defamation**

18 “A defamation action consists of four elements: (1) a false statement [about the
 19 plaintiff], (2) publication, (3) fault, and (4) damages.” *Duc Tan v. Le*, 300 P.3d 356, 363
 20 (Wash. 2013). A plaintiff can allege the false statement prong by alleging facts showing
 21 that the statement is provably false or “leaves a false impression due to omitted facts.”
 22 See *Yeakey v. Hearst Commc’ns, Inc.*, 234 P.3d 332, 335 (Wash. Ct. App. 2010) (citing

1 1 *Mohr v. Grant*, 108 P.3d 768, 773 (Wash. 2005)). “Defamation by implication occurs
 2 when ‘the defendant juxtaposes a series of facts so as to imply a defamatory connection
 3 between them.’” *Corey v. Pierce Cty.*, 225 P.3d 367, 373 (Wash. Ct. App. 2010)
 4 (quoting *Mohr*, 108 P.3d at 774).

5 Washington courts do “not require a defamation defendant to prove the literal truth
 6 of every claimed defamatory statement.” *Id.* at 775. Rather, “[a] defendant need only
 7 show that the statement is substantially true or that the gist of the story, the portion that
 8 carries the ‘sting,’ is true.” *Id.* (quoting *Mark v. Seattle Times*, 635 P.2d 1081, 1092
 9 (Wash. 1981)). The court, not the jury, determines the “sting” of a report. *See id.* “The
 10 ‘sting’ of a report is defined as the gist or substance of a report when considered as a
 11 whole.” *Id.* (quoting *Herron v. King Broad.*, 776 P.2d 98, 102 (Wash. 1989)). “Where a
 12 report contains a mixture of true and false statements, a false statement (or statements)
 13 affects the ‘sting’ of a report only when ‘significantly greater opprobrium’ results from
 14 the report containing the falsehood than would result from the report without the
 15 falsehood.” *Herron*, 776 P.2d at 102. To be actionable, the allegedly defamatory
 16 statement “must be a statement of fact, not a statement of opinion.” *Life Designs Ranch,*
 17 *Inc. v. Sommer*, 364 P.3d 129, 135 (Wash. Ct. App. 2015). Additionally, courts are
 18 “bound to invest words with their natural and obvious meaning and may not extend
 19 language by innuendo or by the conclusions of the pleader.” *Lee v. Columbian, Inc.*, 826
 20 P.2d 217, 219 (Wash. Ct. App. 1991) (internal quotation omitted).

21 A number of privileges and immunities may bar a defamation claim in some
 22 instances. Under the fair report privilege, a report may not be the target of a defamation

1 claim if “(1) the report is attributable to an official proceeding and (2) the report is an
 2 accurate or a fair abridgement of the official report.” *McNamara v. Koehler* 429 P.3d 6,
 3 12 (Wash. Ct. App. 2018). “[T]he fair report privilege applies to news media and other
 4 types of media, including websites, webpages, and blogs, reporting on official public
 5 proceedings, including judicial proceedings.” *Id.* The privilege is not limited solely to
 6 members of the traditional news media. *Id.* “For a report to be a fair abridgment of an
 7 official proceeding, surgical precision is not required so long as the report is substantially
 8 accurate and fair.” *Id.* (quoting *Alpine Indus. Computers, Inc. v. Cowles Pub. Co.*, 57
 9 P.3d 1178, 1187 (Wash. Ct. App. 2002)). “In the summary judgment context,
 10 the plaintiff will not overcome the fair reporting privilege if the reviewing court
 11 determines as a matter of law that the challenged report is a fair abridgment.” *Id.*
 12 (quoting *Alpine*, 57 P.3d at 1187).

13 Additionally, law enforcement agencies have “a qualified privilege when releasing
 14 information to the public or news media concerning official activities.” *Turngren v. King*
 15 *Cty.*, 705 P.2d 258, 268 (Wash. 1985) (citing *Bender v. Seattle*, 664 P.2d 492 (Wash.
 16 1983)). However, “[a] person abuses the qualified privilege by making a statement
 17 knowing it to be false or with reckless disregard as to its truthfulness.” *Id.* “In order to
 18 defeat a motion for summary judgment based upon a qualified privilege, the party
 19 prosecuting an action for libel and slander must meet the limited burden of presenting
 20 specific facts creating a genuine issue as to the question of whether the defendant’s
 21 statements were made after a fair and impartial investigation or upon reasonable grounds

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1 for belief in their truth.” *Id.* at 268-69 (citing *Twelker v. Shannon & Wilson, Inc.*, 564
 2 P.2d 1131, 1134-35 (1977)).

3 Mr. Homchick alleges that certain statements Defendants made at the Press
 4 Conference, in the Press Release, and in the Handout defamed him. (*See* SAC
 5 ¶¶ 169-78.) Defendants move for summary judgment on Mr. Homchick’s defamation
 6 claim on the basis that the statements do not meet the elements of a defamation claim.
 7 (*See* MSJ at 13-16, 25-27.) Additionally, Defendants challenge Mr. Homchick’s
 8 defamation claim on several other grounds, including that Mr. Homchick cannot show
 9 malice or damages and that several privileges and immunities bar Mr. Homchick’s claim.
 10 (*Id.* at 17-19.)

11 The statements at issue fall into two categories: (1) statements that Mr. Homchick
 12 contends accuse him of trafficking crimes, and (2) statements that Mr. Homchick
 13 contends accuse him of additional crimes and abuse of women more generally. The court
 14 analyzes Defendants’ motion for summary judgment with respect to each of these two
 15 groups of statements.

16 1. Alleged Accusations of Criminal Trafficking

17 The first grouping of statements that Mr. Homchick alleges defamed him relate to
 18 the term “trafficking.” Among the statements Defendants made regarding trafficking
 19 include the following:

- 20 • Sheriff Urquhart: Obviously this is a prostitution case. This is a human
 trafficking case is a better way to put this. (Press Conf. Tr. at 3.)
 21 • Sheriff Urquhart: [The prostituted women] weren’t allowed out for the most
 part. They weren’t given any money, to speak of, for the most part. And they

were trafficked up and down the West Coast to other similar situations. (*Id.* at 6.)

- Sheriff Urquhart: These women were trafficked. They were true victims. And this type of crime cannot continue in our area. (*Id.* at 9.)
- Prosecutor Satterberg: It just so happens that January is human trafficking awareness month. This is what human trafficking looks like. (*Id.* at 18-19.)
- ‘The Sheriff’s Office is committed to holding accountable those who prosper from the crime of human trafficking, and to freeing the victims of that crime to live a better life,’ said King County Sheriff John Urquhart. (Press Release at 2.)
- ‘These charges reveal a part of our community that most people do not want to believe exists,’ said King County Prosecutor Dan Satterberg. ‘Because they had money, these men gained access to sexually abuse these vulnerable young women, then put their energies toward a campaign to encourage many more men to do the same. This is what human trafficking looks like,’ he added. (*Id.* at 2.)

Additionally, the Press Release includes the following statement from Police Chief Mylett, who is no longer a defendant in this case:

Bellevue Chief of Police Steve Mylett said, ‘This investigation highlights the fact that human trafficking and sexual exploitation in all its forms, including crimes involving force, fraud, and coercion are happening in communities throughout this nation every day. We will continue to work with our law enforcement partners and victim support organizations to hold the buyers and promoters of these criminal activities accountable for their involvement while identifying and assisting the victims of human trafficking in every possible way.’

(*Id.* at 2.)

At a fundamental level, the parties dispute to what extent these statements accuse Mr. Homchick himself of “trafficking,” and whether “trafficking” as Defendants used the term refers to a specific trafficking crime. As Defendants’ correctly point out, Mr. Homchick’s name was never mentioned in either the Press Conference or the Press

1 Release. (See generally Press Conf. Tr.; Press Release.) The only place Mr. Homchick's
 2 name appeared was in the accompanying Handout, and only in reference to a single
 3 review Mr. Homchick left on www.thereviewboard.net. (See Handout at 3.) Rather,
 4 Defendants generally spoke about the Arrestees as a group of "12 to 14 members of The
 5 League in the Seattle area." (Press Conf. Tr. at 5.)

6 Mr. Homchick "must submit convincingly clear proof of his . . . identity as a target
 7 of an allegedly libelous statement to withstand a defense motion for summary judgment."
 8 *Camer v. Seattle Post-Intelligencer*, 723 P.2d 1195, 1200 (Wash. Ct. App. 1986) (citing
 9 *Sims v. Kiro, Inc.*, 580 P.2d 642, 645 (Wash. Ct. App. 1978)). "The identification of the
 10 one defamed must be certain and apparent from the words themselves." *Id.* "One cannot
 11 by implication identify oneself as the target of an alleged libel if the allegedly libelous
 12 statement does not point to him or her." *Id.* "It is not necessary that the plaintiff be
 13 mentioned by name in order to recover damages, but it is sufficient if the audience will
 14 conclude from a perusal of the article that the plaintiff is the one against whom
 15 publication is aimed." *Id.* Moreover,

16 "[o]ne who publishes defamatory matter concerning a group or class of
 17 persons is subject to liability to an individual member of it if, but only if:
 18 (a) the group or class is so small that the matter can reasonably be understood
 to refer to the member, or (b) the circumstances of publication reasonably
 give rise to the conclusion that there is particular reference to the member."

19 *Sims v. Kiro, Inc.*, 580 P.2d 642, 646 (Wash. Ct. App. 1978) (quoting Restatement
 20 (Second) of Torts § 564A (1977)).

21 A review of the trafficking-related statements to which Mr. Homchick points
 22 makes clear that they do not accuse the Arrestees of trafficking crimes, but rather relate

1 to other aspects of the “large-scale investigation” known as Operation No Impunity and
2 about the practice of trafficking and prostitution in the region generally. That
3 investigation focused not only on those promoting prostitution and soliciting prostituted
4 women, but “also focused on brothel owners, who established a pipeline of foreign
5 women to the Pacific Northwest to meet the burgeoning demand for prostitution fostered
6 by TRB and The League.” (Press Release at 2.) Therefore, statements that “these
7 women were trafficked” or about a broader criminal trafficking enterprise do not target
8 Mr. Homchick.

9 Additional statements Defendants made at the Press Conference specifically
10 distinguish the actions of the Arrestees accused of promoting prostitution—who included
11 Mr. Homchick—from the broader trafficking economy. Defendants made clear that the
12 arrestees were being charged with the crime of promoting prostitution, not criminal
13 trafficking. (*See, e.g.*, Press Conf. Tr. at 7 (“[W]e want to send a message to the men in
14 the Seattle area that want to think about starting a website like this, and you are
15 committing a crime of promoting prostitution in the second degree, and those are the
16 arrests we have made now. . . .”), 20 (“These defendants, we allege, promoted the
17 continued exploitation of these women on the site they called TheReviewboard.net. They
18 solicited and encouraged other men to go and pay for sex with these women, and then to
19 post reviews of them.”).)

20 Defendants further clarified their allegations against the Arrestees in response to
21 questions from the press. For example, one member of the press stated that “promoting
22 prostitution is a Class C felony” that carries “one to three months,” and asked if there

1 “was any talk” about “going after [the Arrestees] federally or with RICO.” (Press Conf.
2 Tr. at 37-38.) Prosecutor Satterberg responded: “Well, promoting prostitution in this
3 case, for the members of The League and the people who put this Review Board together,
4 means that they simply got together to advance prostitution. And I think that’s an
5 accurate label. That may not be where the -- the end of this investigation. It may lead us
6 to other places.” (*Id.* at 38.) Another question from the press was even more direct:
7 “What about using human trafficking charges?” (*Id.* at 39.) Prosecutor Satterberg
8 responded:

9 Again, we’re starting today with the crimes that we know that we can prove.
10 We know that there are people, and they’re not necessarily local, they may
11 be in other parts of the West Coast, that are more involved in the actual
receipt of women who are forced, by their criminal counterparts in Korea, to
be part of this thing. We know it goes much deeper than what we’ve seen
today.

12 (*Id.* at 39.) In response to another press question about whether the League was
13 “involved in bringing these women here at all,” Sheriff Urquhart responded that for the
14 most part the League “was involved once they got here in promoting them,” again
15 distinguishing the actions of the Arrestees from those who allegedly trafficked the
16 women into the United States in the first place. (*Id.* at 42.)

17 Given that Defendants repeatedly and clearly distinguished their accusations
18 against the Arrestees from their statements about those who bring the women to the
19 United States, Defendants’ statements about the investigation and trafficking broadly
20 cannot be read to accuse Mr. Homchick of a trafficking crime. Similarly, broader
21 statements about what “this case is about” are not about Mr. Homchick, because those
22

1 statements also refer to a broader investigation that goes beyond the Arrestees. *See Sims*,
2 580 P.2d at 645 (“One cannot by implication identify himself as the target of an alleged
3 libel if the allegedly false statement does not point to him.”).

4 Indeed, elsewhere in his responsive brief, Mr. Homchick appears to concede that
5 statements about Defendants’ broader investigation are not about him. (*See* Resp. at
6 21-22.) In their motion, Defendants contend that even if the trafficking-related
7 statements targeted Mr. Homchick, Mr. Homchick admitted to involvement in trafficking
8 as part of the stipulation he entered as part of his plea agreement. (*See* Plea Agreement
9 (1st Montgomery Decl. ¶ 3, Ex. A (“Plea Agreement”); Prosecutor’s Statement at 1.) Mr.
10 Homchick stipulated that “[h]is actions were part of a sophisticated criminal enterprise
11 centered around ‘trafficking’ and ‘human trafficking,’ involving foreign nationals who
12 were ‘trafficked from major city to major city’ for sexual exploitation.” (MSJ at 16
13 (quoting Prosecutor’s Statement at 1).) In response, Mr. Homchick argues that the
14 “Certification of Probable Cause and Prosecutor’s Statement included background
15 information on the investigation that globally applied to all [D]efendants” and “any
16 reference to ‘trafficking,’ even under Defendants’ personal definition of the term, did not
17 connote that Plaintiff himself was specifically involved in that conduct.” (*See* Resp. at
18 21-22.) In other words, for purposes of avoiding his admission of facts about trafficking,
19 Mr. Homchick contends the statements are generalized and not about him specifically;
20 but for purposes of withstandng summary judgment on his defamation claim, he
21 contends the opposite—that the even more general statements at the Press Conference
22 and in the Press Release specifically targeted him. (*Id.*) Mr. Homchick cannot have it

1 both ways. Because Defendants' statements about trafficking crimes were not about Mr.
 2 Homchick, Defendants are entitled to summary judgment on Mr. Homchick's defamation
 3 claim to the extent it rests on such statements.

4 2. Additional Statements

5 Mr. Homchick contends that Defendants' motion focuses solely on the
 6 "trafficking" statements and fails to address statements about other "criminal activity
 7 involving force, fraud or coercion, including associating [Mr. Homchick] with . . . sex
 8 slavery, kidnapping, rape, criminal sexual abuse, and debt bondage of South Korean
 9 women—all of which are provably false statements of fact." (Resp. at 16.) In doing so,
 10 Mr. Homchick cites primarily to his operative complaint—not evidence in the record—
 11 and does not specify the statements to which he refers, or even the portion of his
 12 operative complaint where those allegations may be found. (*See generally id.*)

13 Nevertheless, the parties discuss several statements that appear in the record and
 14 that reference or relate to some form of "fraud, force, or coercion" or "sex slavery,
 15 kidnapping, rape, criminal sexual abuse, [or] debt bondage":

- 16 • Prosecutor Satterberg: They euphemistically called themselves hobbyists.
 And their hobby was the criminal sexual abuse of women brought here,
 against their will, in servitude to pay off debts back in Korea. (Press Conf.
 Tr. at 19-20.)
- 17 • Sheriff Urquhart: [The prostituted women] were abused and commercially
 raped by men here in King County. That's what this case is about. And
 that's what is fueling us. Because this is an international human trafficking
 ring. It's right here in King County, Washington. And we're offended by it.
 (*Id.* at 39.)
- 21 • Prosecutor Satterberg: Because they had money, these men gained access to
 sexually abuse these vulnerable young women, then put their energies toward

1 a campaign to encourage many more men to do the same. (Press Release at
2 2.)

3 Additionally, Police Chief Mylett made the following statements:

- 4
- 5 • Police Chief Mylett: [I]n cases such as this, the sexual contact was not
6 consensual, and these women were being forced to perform sexual acts
7 through exploitation, force and coercion. (Press Conf. Tr. at 16.)
 - 8 • Police Chief Mylett: These women are being abused, they're being raped,
9 they're being murdered. (*Id.* at 26.)

10 As discussed above, Defendants delineated multiple times the differences between
11 what they alleged the Arrestees did—promoting prostitution through review websites—
12 and what they allege a broader group of individuals did: forcing women against their will
13 to travel to the United States to engage in prostitution. *See supra* § III.C.1. Similarly,
14 the context of the Press Release and Press Conference made clear that none of the
15 Arrestees were accused of kidnapping, murder, or rape, and that they were only charged
16 with promoting prostitution. *See id.*

17 The parties may disagree on the semantics of what specific activities constitute
18 “sexual abuse,” “commercial rape,” and “commercial exploitation.” However, to the
19 extent the remaining statements about “hobbyists,” “these men,” and the Arrestees target
20 Mr. Homchick, they are insufficient to withstand summary judgment on Mr. Homchick’s
21 defamation claim because the “sting” of Defendants’ statements about Mr. Homchick in
22 the Press Conference and Press Release are true. *See Mohr*, 108 P.3d at 775 (“A
 defendant need only show that the statement is substantially true or that the gist of the
 story, the portion that carries the ‘sting,’ is true.”); *id.* (holding that the court, not the jury,
 determines the “sting” of a report); *see also Herron*, 776 P.2d at 102 (“Where a report

1 contains a mixture of true and false statements, a false statement (or statements) affects
2 the ‘sting’ of a report only when ‘significantly greater opprobrium’ results from the
3 report containing the falsehood than would result from the report without the
4 falsehood.”).

5 Among the facts to which Mr. Homchick stipulated are that Mr. Homchick “is a
6 member of an exclusive group of men dedicated to the *commercial sexual exploitation* of
7 women, particularly foreign women brought into the United States for prostitution
8 purposes.” (Prosecutor’s Statement at 1 (emphasis added).) Additionally, Mr. Homchick
9 stipulated that his actions promoting prostitution “directly expanded and increased the
10 market for exploited women in the region,” that as a result of his actions “numerous
11 Asian brothels have sprung up in the region to respond directly to the demand for
12 prostitution” and that “[t]hese brothels serve as part of a national pipeline that transports
13 exploited women around the country for use in prostitution.” (*Id.*) Mr. Homchick further
14 stipulated that he “maintained constant communication centered on [his] obsession with
15 sexual exploitation” and “contributed to a national network of commercial sexual
16 exploitation and personally engaged in this exploitation time and time again.” *Id.* Mr.
17 Homchick may not relitigate these facts to which he stipulated. *See Wingate v. City of*
18 *Seattle*, 198 F. Supp. 3d 1221, 1226 (W.D. Wash. 2016) (noting that parties cannot
19 challenge stipulated facts made during course of their prosecutions); (*see also* 7/6/18
20 Order at 12) (ruling that Mr. Homchick “cannot proceed on any theory that [his guilty]
21 plea was not knowing and voluntary.”)).

22 //

1 Mr. Homchick claims that he is not proceeding “on any theory that his plea was
 2 not knowing or voluntary.” (Resp. at 33.) Because Mr. Homchick admitted to
 3 contributing “to a national network of commercial sexual exploitation and personally
 4 engaged in this exploitation time and time again,” Mr. Homchick’s defamation claim
 5 must rest on fine-tooth distinctions between “sexual exploitation” (to which he admitted)
 6 and “sexual abuse,” “commercial rape,” and “commercial exploitation” (which he
 7 contends defamed him). These distinctions are too fine to sustain a defamation claim.
 8 Even if those terms were meaningfully different—and it is far from clear that they are—the
 9 court concludes that the “sting” of the Press Release and Press Conference, when
 10 considered as a whole, is true. *See Mohr*, 108 P.3d at 775. As discussed above,
 11 Defendants made clear that the Arrestees—which included Mr. Homchick, although they
 12 did not use his name—were charged with promoting prostitution, not more serious crimes
 13 such as trafficking, rape, or murder. *See supra* § III.C.1. Defendants’ use of these
 14 additional terms must be read in that context and cannot be fairly read to allege that Mr.
 15 Homchick committed crimes beyond the crime of promoting prostitution that he was
 16 charged with and to which he pleaded guilty. *See id.* (“The ‘sting’ of a report is defined
 17 as the gist or substance of a report when considered as a whole.”) (quoting *Herron*, 776
 18 P.2d at 102).

19 For these reasons, the court concludes that Defendants are entitled to summary
 20 judgment on Mr. Homchick’s defamation claim.⁴

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⁴ In Defendants’ reply brief, Defendants move to strike a “report summary” submitted by Lauren A. Freeman on behalf of Mr. Homchick on the ground that her interpretations of the

1 **D. False Light**

2 “False light differs from defamation in that it focuses on compensation for mental
 3 suffering, rather than reputation.” *Corey v. Pierce Cty.*, 225 P.3d 367, 373 (Wash. Ct.
 4 App. 2010). Nevertheless, “like defamation, false light claims require a showing of
 5 falsity and knowledge of, or reckless disregard for that falsity.” *Id.* “A false light claim
 6 arises when ‘someone publicizes a matter that places another in a false light if (a) the
 7 false light would be highly offensive to a reasonable person and (b) the actor knew of or
 8 recklessly disregarded the falsity of the publication and the false light in which the other
 9 would be placed.’” *Id.* (quoting *Eastwood v. Cascade Broad. Co.*, 722 P.2d 1295, 1297
 10 (Wash. 1986)). “[A] plaintiff must present a prima facie case of false light to overcome a
 11 motion for summary judgment.” *Seaquist v. Caldier*, 438 P.3d 606, 616 (Wash. Ct. App.
 12 2019) (affirming a summary judgment in favor of the defendant where the plaintiffs
 13 failed to present prima facie evidence of falsity).

14 Mr. Homchick rests his false light claim on the same statements made by
 15 Defendants at the Press Conference, in the Press Release, and in the Handout. (*See* Resp.
 16 at 30.) For the same reasons Mr. Homchick fails to show falsity—and that several of the
 17 alleged statements were about him in the first place—for his defamation claim, *see supra*

18 Washington Rules of Professional Conduct amount to opinions of law that are reserved for the
 19 court. (*See* Reply at 19 (citing 2nd Cassubhai Decl. ¶ 4, Ex. 1 (“Freeman Rpt.”).) Mr.
 20 Homchick relies on Ms. Freeman’s report primarily to attack Defendants’ invocation of the law
 21 enforcement privilege. (*See* Resp. at 28.) Because the court need not address the law
 22 enforcement privilege to dispose of Mr. Homchick’s defamation claim, the court denies as moot
 Defendants’ motion to strike Mr. Freeman’s report. For the same reasons, the court denies as
 moot Mr. Homchick’s separately filed motion to supplement the summary judgment record (*see*
 Mot. to Supplement (Dkt. # 85)) with the expert rebuttal expert report of Bruce A. Green, which
 is directed at Ms. Freeman’s report.

1 | § III.C, he fails to show falsity for his false light claim. Therefore, Defendants are
 2 | entitled to summary judgment on Mr. Homchick's false light claim.

3 **E. Aiding and Abetting Defamation and False Light**

4 Mr. Homchick includes two claims in his operative complaint for aiding and
 5 abetting allegedly defamatory statements by Police Chief Mylett, who is no longer a
 6 defendant in this case, Demand Abolition, and "City of Bellevue Agents." (See SAC
 7 ¶¶ 189-93.) Defendants contend they are entitled to summary judgment on these claims
 8 (see MSJ at 26-27), and the court agrees. Mr. Homchick concedes that "there is no
 9 specific case" in a Washington court recognizing a cause of action for aiding and abetting
 10 defamation or false light but contends that "there is nothing extraordinary about the
 11 theory under basic principles of common law." (Resp. at 31.) Even if the court were to
 12 recognize an aiding and abetting theory for defamation or false light, Mr. Homchick has
 13 not met his burden to show that the underlying statements of which he complains are
 14 defamatory or placed him in a false light. Thus, Defendants are entitled to summary
 15 judgment on Mr. Homchick's aiding and abetting claims as well.

16 **F. Intentional Infliction of Emotional Distress**

17 The burden of proof on an intentional infliction of emotional distress ("IIED")
 18 claim is stringent. *See Lyons v. U.S. Bank Nat. Ass'n*, 336 P.3d 1142, 1151 (Wash. 2014).
 19 To prevail on an IIED claim, "a plaintiff must prove (1) outrageous and extreme conduct
 20 by the defendant, (2) the defendant's intentional or reckless disregard of the probability
 21 of causing emotional distress, and (3) actual result to the plaintiff of severe emotional

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1 distress.” *Steinbock v. Ferry Cty. Pub. Util. Dist. No. 1*, 269 P.3d 275, 282 (Wash. Ct.
 2 App. 2011).

3 “The first element requires proof that the conduct was ‘so outrageous in character,
 4 and so extreme in degree, as to go beyond all possible bounds of decency, and to be
 5 regarded as atrocious, and utterly intolerable in a civilized community.’” *Lyons*, 336
 6 P.3d at 1151 (quoting *Robel v. Roundup Corp.*, 59 P.3d 611, 619 (Wash. 2002); *Dicomes*
 7 *v. State*, 782 P.2d 1002, 1012 (Wash. 1989)). “The question of whether certain conduct
 8 is sufficiently outrageous is ordinarily for the jury, but it is initially for the court to
 9 determine if reasonable minds could differ on whether the conduct was sufficiently
 10 extreme to result in liability.” *Id.* (quoting *Dicomes*, 782 P.2d at 1013). Similarly, “[i]t is
 11 for the court to determine whether on the evidence severe emotional distress can be
 12 found; it is for the jury to determine whether, on the evidence, it has in fact
 13 existed.” *Id.* (quoting Restatement (Second) of Torts § 46 (1965)).

14 Defendants are entitled to summary judgment on Mr. Homchick’s IIED claim
 15 because reasonable minds could not differ on whether Defendants actions at the Press
 16 Conference and in the Press Release went “beyond all possible bounds of decency.”
 17 *Lyons*, 336 P.3d at 1151. As discussed above, Defendants announced the initial results of
 18 a broad investigation into prostitution and trafficking in the Seattle area, and did not
 19 accuse Mr. Homchick of crimes beyond those with which he was charged. *See supra*
 20 § III.C. Although the topics addressed at the Press Conference and in the Press Release
 21 are not for the faint of heart, discussing Defendants’ investigation into these activities is
 22 hardly outrageous.

1 **G. Negligent Infliction of Emotional Distress**

2 Negligent infliction of emotional distress (“NIED”) is a narrowly construed tort
 3 under which a plaintiff must prove (1) that he or she suffered emotional distress that is
 4 within the scope of foreseeable harm of the negligent conduct, (2) the plaintiff reasonably
 5 reacted given the circumstances, and (3) objective symptomatology confirms the
 6 distress.” *Repin v. State*, 392 P.3d 1174, 1184 (Wash. Ct. App. 2017) (citing *Bylsma v.*
 7 *Burger King Corp.*, 293 P.3d 1168, 1170-71 (Wash. 2013)). “[T]o satisfy the objective
 8 symptomatology requirement . . . a plaintiff’s emotional distress must be susceptible to
 9 medical diagnosis and proved through medical evidence.” *Hegel v. McMahon*, 960 P.2d
 10 424, 431 (Wash. 1998). The plaintiff must provide “objective evidence regarding the
 11 severity of the distress, and the causal link between the observation at the scene and the
 12 subsequent emotional reaction.” *Id.*

13 Defendants contend that they owed no relevant duty of care to Mr. Homchick, and
 14 that Mr. Homchick fails to provide evidence of any medical diagnosis that supports the
 15 objective symptomology element. Mr. Homchick’s response does not refute these
 16 arguments and does not point to medical evidence of objective symptomology. (See
 17 generally Resp.) Accordingly, Defendants are entitled to summary judgment on Mr.
 18 Homchick’s NIED claim.

19 **H. Claims Under 42 U.S.C. § 1983**

20 Mr. Homchick brings two claims against Defendants under 42 U.S.C. § 1983, one
 21 for Fourteenth Amendment due process violations (SAC ¶¶ 149-58) and one for “abuse
 22 //

1 of process" (*id.* ¶¶ 159-68). Defendants move for summary judgment on both claims.
 2 (See MSJ at 12-25.)

3 Section 1983 provides a private right of action against government officials for a
 4 deprivation "of any rights, privileges, or immunities secured by the Constitution and
 5 laws." 42 U.S.C. § 1983. "The purpose of § 1983 is to deter state actors from using the
 6 badge of their authority to deprive individuals of their federally guaranteed rights and to
 7 provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161
 8 (1992). Section 1983 is not itself a source of substantive rights. *Graham v. Connor*, 490
 9 U.S. 386, 393-94 (1989). Rather, it provides a cause of action for the vindication of
 10 federal rights. *Id.* "[S]ection 1983 'imposes liability for violations of rights protected by
 11 the Constitution, not for violations of duties of care arising out of tort law.'" *Johnson v.*
 12 *Barker*, 799 F.2d 1396, 1399 (9th Cir. 1986) (quoting *Baker v. McCollan*, 443 U.S. 137,
 13 146 (1979)). "The Fourteenth Amendment is not a 'font of tort law to be superimposed
 14 upon whatever systems may already be administered by the States.'" *Id.* (quoting *Paul*
 15 *v. Davis*, 424 U.S. 693, 701 (1976)). "In order to achieve constitutional import, there
 16 must be a deprivation of a protected interest." *Id.*

17 1. Due Process Claim

18 The Fourteenth Amendment's guarantee of due process applies when a
 19 constitutionally protected liberty or property interest is at stake. *Vanelli v. Reynolds Sch.*
 20 *Dist. No. 7*, 667 F.2d 773, 777 (9th Cir. 1982). An analysis of a due process claim
 21 requires the court to ask "(1) Was the plaintiff deprived of a protected interest; and (2) if

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1 so, what process was due?” *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982); see
 2 also *Mishler v. Nev. State Bd. of Med. Examiners*, 896 F.2d 408, 409 (9th Cir. 1990).
 3 Defendants discuss Mr. Homchick’s defamation allegations as part and parcel of his
 4 § 1983 claim for due process violations. (See, e.g., MSJ at 12-13 (“[Mr.] Homchick’s
 5 due process theory under [§] 1983 revolves around defamation. . . . To establish a claim
 6 for defamation under § 1983, [Mr.] Homchick must first establish defamation under state
 7 law.”).) In response, Mr. Homchick states that he “is not seeking to federalize his
 8 common law defamation claim and, thus, no response to the defamation-plus line of
 9 argument is necessary.” (Resp. at 34 n.9.) However, Mr. Homchick does not identify
 10 any other basis for his due process claim. (See *id.* at 33 (stating that Mr. Homchick “does
 11 not accept” that “King County can conflate the prostitution crime for which he pled out
 12 with accusations of sex trafficking, sex slavery, rape, kidnaping, criminal sexual abuse,
 13 and other conduct involving force or coercion”).) The most charitable view of Mr.
 14 Homchick’s due process claim is that it relates to either vague allegations of impropriety
 15 with respect to his state court prosecution (which he is barred from challenging under
 16 *Heck*), or with respect to King County’s relationship with Demand Abolition. In either
 17 case, however, Mr. Homchick fails to identify the liberty or property right that he alleges
 18 Defendants violated. (See generally Resp.)

19 This is not the first time Mr. Homchick has failed to identify the theory behind his
 20 § 1983 due process claim. In denying Defendants’ earlier motion to dismiss Mr.
 21 Homchick’s federal claims, the court noted that Mr. Homchick “does not concretely
 22 identify how Defendants violated his right to due process.” (7/6/18 Order at 11.)

1 Although the court did not dismiss Mr. Homchick's federal claims based on *Heck*, the
 2 court held that Mr. Homchick "cannot proceed on any theory that [his guilty] plea was
 3 not knowing and voluntary." (*Id.* at 12.) Now, at the summary judgment stage, Mr.
 4 Homchick's failure to identify a protected liberty or property interest is fatal to his due
 5 process claim.⁵

6 2. Abuse of Process Claim

7 In the first instance, the court notes that the Ninth Circuit has never held that an
 8 abuse of process claim is cognizable under § 1983. *See West v. City of Mesa*, 708 F.
 9 App'x 288, 292 (9th Cir. 2017) (concluding that "[e]ven assuming an abuse of process
 10 claim is cognizable under § 1983 in our circuit, [the plaintiff] failed to plead sufficient
 11 facts to establish the elements of such a claim"). Indeed, "[m]ost federal courts to
 12 consider whether a state actor's alleged abuse of process can give rise to a constitutional
 13 claim under § 1983 have concluded that there is no constitutional violation absent
 14 conscience-shocking egregious wrongdoing." *Brown v. Lever*, No.

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16 ⁵ Mr. Homchick requests that the court "allow him to complete discovery that could
 17 inform the Court's review of whether the conduct at issue arises to conscience-shocking." (Resp.
 18 at 33.) Mr. Homchick also includes, in a standalone paragraph, a request for a "continuance" on
 19 the grounds that "additional discovery may be helpful before determination of at least the federal
 20 claims." (*Id.* at 34.) "If a nonmovant shows by affidavit or declaration that, for specified
 21 reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer
 22 considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take
 discovery; or (3) issue any other appropriate order." Fed. R. Civ. P. 56(d). Mr. Homchick's
 counsel contends that more discovery is necessary to determine whether Defendants' actions
 with respect to their relationship with Demand Abolition "shock the conscience." (See
 1st Cassubhai Decl. ¶ 3.) However, Mr. Homchick fails to identify what facts he hopes to
 uncover with this additional discovery and fails to explain what liberty or property interest of Mr.
 Homchick's is at stake, as is necessary to sustain a due process claim. Therefore, the court
 DENIES Mr. Homchick's request for a Rule 56(d) continuance.

1 | 2:17-cv-00828-JAD-PAL, 2018 WL 1903120, at *6 (D. Nev. Apr. 20, 2018) (citing
 2 | Martin A. Schwartz, Section 1983 Claims & Defenses, § 3.18 Malicious Prosecution;
 3 | Abuse of Civil Process (4th ed. 2018 Supp.) (collecting cases)).

4 | Even if the court were to recognize an abuse of process claim under § 1983, Mr.
 5 | Homchick's claim fails for a similar reason as his due process claim, namely that he does
 6 | not identify the process that was abused. At best, Mr. Homchick contends that an abuse
 7 | of process claim arises in the presence of "conscience-shocking conduct," and argues that
 8 | King County's relationship with Demand Abolition somehow amounts to such conduct.
 9 | However, Mr. Homchick cites no authority for the proposition that a county receiving
 10 | funding from an advocacy organization aligned with the county's priorities constitutes an
 11 | abuse of process.⁶ Accordingly, Defendants are entitled to summary judgment on Mr.
 12 | Homchick's abuse of process claim.

13 | 3. Monell Claim Against Defendant King County

14 | In addition to the individual Defendants, Mr. Homchick alleges his § 1983 claims
 15 | against Defendant King County on the basis that King County "failed to train and/or
 16 | supervise its employees with deliberate indifference" to Mr. Homchick's rights. (SAC
 17 | ¶¶ 155, 166.) Under the *Monell* doctrine, "a municipality cannot be held liable under
 18 | § 1983 on a respondeat superior theory." *Monell v. New York City Dep't of Soc. Servs.*,

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 21 |
 22 |
 6 | Mr. Homchick's failure to identify a protected liberty or property interest or an abuse of
 process also entitles Defendants to qualified immunity. See *Pearson v. Callahan*, 555 U.S. 223,
 232 (2009) (explaining that government officials are entitled to qualified immunity if the
 plaintiff fails to point to facts that support a violation of a clearly established constitutional right)
 (discussing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)).

1 436 U.S. 658, 691 (1978). “Instead, a plaintiff can allege that the action inflicting injury
2 flowed from either an explicitly adopted or a tacitly authorized city policy.” *Vinatieri v.*
3 *Mosley*, 787 F. Supp. 2d 1022, 1034-35 (N.D. Cal. 2011) (citing *Monell*, 436 U.S. at
4 690-91); *Harris v. City of Roseburg*, 664 F.2d 1121, 1130 (9th Cir. 1981) (“Official
5 policy within the meaning of *Monell* [encompasses situations] where a municipality
6 impliedly or tacitly authorized, approved, or encouraged illegal conduct by its police
7 officers.”) (internal quotations and citations omitted) (alterations in *Harris*)). “[B]ecause
8 *Monell* held that a municipality may not be held liable under a theory of respondeat
9 superior, a plaintiff must show that the municipality’s deliberate indifference led to the
10 omission and it caused the employee to commit the constitutional violation.” *Vinatieri*,
11 787 F. Supp. 2d at 1035 (citing *Gibson v. Cty. of Washoe, Nev.*, 290 F.3d 1175, 1186 (9th
12 Cir. 2002)). “In order to do so, the plaintiff must also show that the municipality was on
13 actual or constructive notice that its omission would likely result in a constitutional
14 violation.” *Id.* (citing *Gibson*, 290 F.3d 1175 at 1186; *Farmer v. Brennan*, 511 U.S. 825,
15 841 (1994)).

16 Taken together, to survive summary judgment on his *Monell* claim, Mr. Homchick
17 must show “(1) that an officer employed by [King County] violated [Mr. Homchick’s]
18 rights; (2) that [King County] has customs or policies that amount to deliberate
19 indifference . . .; and (3) that these policies were the moving force behind the officer’s
20 violation of [Mr. Homchick’s] constitutional rights, in the sense that [King County]
21 would have prevented the violation with an appropriate policy.” *See id.* at 1035
22 (citing *Gibson*, 290 F.3d 1175 at 1186; *Amos v. City of Page*, 257 F.3d 1086, 1094 (9th

1 Cir. 2001)). A *Monell* claim must be based on “a deliberate choice to follow a course of
 2 action . . . made from among various alternatives by the official or officials responsible
 3 for establishing final policy with respect to the subject matter in question.” *See Gillette v.*
 4 *Delmore*, 979 F.2d 1342, 1347 (9th Cir. 1992); *see also id.* (“The cases make clear that
 5 the unconstitutional discretionary actions of municipal employees generally are not
 6 chargeable to the municipality under section 1983.”).

7 Defendants contend they are entitled to summary judgment on Mr. Homchick’s
 8 § 1983 claim against King County because Mr. Homchick fails to demonstrate a basis for
 9 *Monell* liability. (MSJ at 20.) Mr. Homchick spends only two paragraphs in his
 10 responsive brief on his *Monell* claim and fails to identify (1) any constitutional violation
 11 or (2) any King County policy that was the “moving force” behind such a violation. (*See*
 12 Resp. at 32.) Mr. Homchick’s only substantive argument is that “the resolution of [Mr.
 13 Homchick’s] claim against King County under *Monell* flows in large part from
 14 Defendants’ broad admissions concerning their ideological and policy-based views
 15 conflating prostitution and trafficking.” (*Id.*) In making this argument, Mr. Homchick
 16 fails to cite any evidence in the record and fails to cite legal authority for the proposition
 17 that Defendants’ “ideological and policy-based views” rise to the level of a constitutional
 18 violation against Mr. Homchick. Accordingly, Defendant King County is entitled to
 19 summary judgment on Mr. Homchick’s *Monell* claim.

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IV. CONCLUSION

For the foregoing reasons, the court GRANTS Defendants' motion for summary judgment (Dkt. # 61) and DENIES AS MOOT Defendants' motion to supplement the summary judgment record (Dkt. # 85).

Dated this 21st day of August, 2020.



Jim R. Blit

JAMES L. ROBART
United States District Judge